

No. 12516

United States
Court of Appeals
for the Ninth Circuit.

FOON GOON MOK,

Appellant.

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Northern District of California,
Southern Division.

FILED

MAY 4 - 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Northern District of California,
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Attorney for Respondent and
Appellee.

United States of America

PETITION FOR NATURALIZATION

(Filed under Section 324-A of the
Nationality Act of 1940)

To the Honorable the District Court of the United States at San Francisco, Calif. This petition for naturalization, hereby made and filed, respectively shows:

(1) My full, true, and correct name is Fong Goon Mok aka Henry Mok Aks Yick Jue Mok.

(2) My present place of residence is Crown Hotel, 538 Pine St., Rm. 95, San Francisco, Calif.

(3) My occupation is Restaurant Worker. (4) I am 36 years old. (5) I was born on July 18, 1912 in Sun Wei District, Kwongtung Prov., China. (6) My personal description is as follows: Sex, male; color, yellow; complexion, sallow; color of eyes, brown; color of hair, black; height, 5 feet 6 inches; weight, 145 pounds; visible distinctive marks, birthmark on rt. temple and scar on left center of cheek; race, Chinese; present nationality, Chinese.

(7) I am married; the name of my wife is Lum Fung How, we were married on October, 1928, at Sun Wei District, Kwongtung Prov., China. She was born at Sun Wei District, Kwongtung Prov., China, on unkown date and now resides in China.

(8) I have two children; and the name, sex,

date and place of birth, and present place of residence of each of said children who is living, are as follows: Mok Yee Lok-m-bn. January, 1929, in China, Res. Canton City, China; Mok Kwong Yee-m-bn. January 15, 1948, in China, res. in China.

(9) My last place of foreign residence was Sun Wei City, China.

(10) I emigrated to the United States from Hong Kong, China.

(11) My lawful entry in the United States was at New York, N. Y., under the name of Fong Goon Mok on May, 1930, on the unkown vessel or means of conveyance.

(12) I entered the U. S. Army on October 21, 1942, under Serial No. 36-382-761 and was honorably discharged on September 26, 1945.

(13) My place of residence at the time of enlistment or induction into the military or naval forces of the United States was Chicago, Illinois.

(14) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty of whom or which at this time I am a subject or citizen, and it is my intention to reside permanently in the United States. (15) I am not, and have not been for the period of at least 10 years immediately preceding the date of this petition,

an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government. (16) I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. (17) I have not heretofore made petition for naturalization.

(18) Attached hereto and made a part of this, my petition for naturalization, are a certificate of arrival from the Immigration and Naturalization Service of my said lawful entry into the United States (if such certificate of arrival be required by the naturalization law), and the affidavits of at least two verifying witnesses required by law.

(19) Wherefore, I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to Henry Mok.

(20) I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best of my own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters I believe

them to be true, and that this petition is signed by me with my full, true name: So Help Me God.

/s/ HENRY MOK.

/s/ FONG GOON MOK.

I Certify that the petitioner and witnesses named herein appeared before and were examined by me on February 28, 1949, prior to the filing of this petition.

/s/ ZELMA C. BENTON,
U. S. Naturalization
Examiner.

Affidavit of Witnesses

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

My name is Jung Cheong Ng, my occupation is Student. I reside at 538 Pine St., San Francisco, Calif., and

My name is Di H. Fong, my occupation is Merchant. I reside at 601 Grant Ave., San Francisco, Calif.

I am a citizen of the United States; I have personally known and have been acquainted in the United States with Fong Goon Mok, the petitioner named in the petition for naturalization of which this affidavit is a part, since October, 1948, and I have personal knowledge that the petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness

of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in this affidavit of this petition for naturalization subscribed by me are true to the best of my knowledge and belief: So Help Me God.

/s/ JUNG CHEONG NG.

/s/ DI H. FONG.

Subscribed and sworn to before me by the above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit in the office of the Clerk of said Court at San Francisco, Calif., this 28th day of February, Anno Domini 1949.

/s/ F. P. BOLAND,
Designated Examiner.

I hereby certify that the foregoing petition for naturalization was by the petitioner above-named filed in the office of the Clerk of said Court at San Francisco, California, this 28th day of February A.D. 1949.

C. W. CALBREATH,
Clerk.

[Seal] By /s/ JANE C. BARROW,
Deputy Clerk.

1300-K-23969.

nds

Oath of Allegiance

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God. In acknowledgment whereof I have hereunto affixed my signature.

/s/ HENRY MOK.

/s/ FONG GOON MOK.

Sworn to in open court, this....day of.....,
A. D. 19.....

C. W. CALBREATH,
Clerk.

Petition denied: List No. 2282, 12-13-49. Failure to establish good moral character for required time.

Petition continued from List 2281, 12-12-49 to 12-13-49.

Reason, Hrg.

12-13-49 U. S. Exhibit 1 filed—Court ord. U. S. may withdraw Exhibit 1.

12-13-49 Petnr's Exhibit "A" filed. Notice of appeal Filed 1-11-50.

Notice served on U. S. Atty. and Dist. Director of Imm. & Nat'zn. 1-13-50.

U. S. District Court

Petition No. 90811

In the Matter of the Petition of
Fong Goon Mok aka Henry Mok to Be Admitted
a Citizen of the United States of America.

Affidavits of Witnesses

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

My name is Charles Fong (aka Fong Yew Ming); my occupation is Bus Boy; I reside at 601 Grant Ave., San Francisco, California.

I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with Fong Goon Mok (Henry Mok), the petitioner above mentioned since September, 1948; to my personal knowledge the petitioner has resided in the United States at San Francisco, in the State of California, continuously from September, 1948, to Mar. 1, 1949, and I have personal knowledge that the petitioner is and during all such period has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in this affidavit subscribed by me are

true to the best of my knowledge and belief: So Help Me God.

/s/ CHARLES FONG.

Subscribed and sworn to before me by the above-named witness(es) in the form of oath shown above at San Francisco, California, this 1st day of March, Anno Domini 1949.

[Seal]: /s/ T. L. BALDWIN,
Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Filed Mar. 1, 1949.

Date, December 13th, 1949. List No. 2282.

This list consists of Five sheets. Sheet No. 4.

NATURALIZATION PETITIONS RECOMMENDED TO BE DENIED

To the Honorable the District Court of the United States sitting at San Francisco, California. J. F. O'Shea and F. P. Boland duly designated under the Nationality Act of 1940 (54 Stat. 1156) to conduct preliminary hearings upon petitions for naturalization to the above-named Court and to make findings and recommendations thereon, has personally examined under oath at a preliminary hearing the following Thirty-Three (33) petitioners for naturalization and their required witnesses, has found for the reasons stated below, that such

petitions should not be granted, and therefore recommends that such petitions be denied.

* * *

(30) Petition No. 90811.

Name of Petitioner, Foon Goon Mok.

Reason for Denial, Failure to establish good moral character for the period required by law.

* * *

Respectfully submitted,

/s/ F. P. BOLAND,

Officer in attendance at final hearing.

Respectfully submitted,

Date, December 13th, 1949.

[Endorsed]: Filed Dec. 13, 1949.

—

In the District Court of the United States

Date, December 13th, 1949. List No. 2282.

This list consists of Five sheets. Sheet No. Five.

ORDER OF COURT

United States of America,
Northern District of California;
Southern Division—ss.

Upon consideration of the petitions for naturalization listed on List No. 2282 sheet(s) 3 and 4 dated December 13th, 1949, presented in open Court this

Thirteenth day of December A.D., 1949, It Is Hereby Ordered that each of the said petitions be, and hereby is, denied, except those petitions listed below.

Recommendation of Designated Officer Is Disapproved as to the Petitions Listed Below, and each of said petitioners so listed having appeared in person, It Is Hereby Ordered that each of them be, and hereby is, admitted to become a citizen of the United States of America. Prayers for change of name listed below granted,

Petition No.	Name of Petitioner	Change of Name
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* * *

It is further ordered that petitions listed below be continued for the reasons stated.

Petition No.	Name of Petitioner.	Cause for Continuance
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* * *

By the Court.

/s/ LOUIS E. GOODMAN,
Judge.

[Endorsed]: Filed Dec. 13, 1949.

RECOMMENDATION PAGE 29, RE: NO. 90811
—PETITION OF FOON GOON MOK FOR
NATURALIZATION, ATTACHED TO AND
MADE A PART OF FINDINGS AND REC-
COMMENDATIONS OF DESIGNATED
EXAMINER, IMMIGRATION AND NAT-
URALIZATION SERVICE. FINAL HEAR-
ING: DECEMBER 13, 1949.

90811

Foon Goon Mok also known as Henry Mok and
Yich Jue Mok.

The question presented is whether the petitioner has established good moral character, as contemplated by Section 324-A of the Nationality Act of 1940, as amended.

The evidence of record establishes that the petitioner falsely claimed United States citizenship at the time he entered the United States Army in 1942; in applying for a United States passport at Chicago, Illinois, on July 12, 1946; in seeking reentry into the United States in August, 1948; in appearing as a witness in a naturalization proceeding in 1946 and later as a witness for the same person in applying for a United States passport. He also gave false information concerning his marital status, at the time he entered the Army, before a United States Consul in 1947 or 1948, and in seeking reentry into the United States in August, 1948. The false statements in applying for a United States passport on July 12, 1946, and in seeking reentry into the United States in August,

1948, were under oath. All of these false representations were made knowingly and wilfully. The petitioner's continued wilful false testimony concerning his citizenship up to within a few months of the filing of his petition for naturalization precludes him from establishing good moral character.

It is the recommendation of this Service that the petition of Foon Goon Mok, also known as Henry Mok and Yieh Jue Mok, be denied on the ground that the petitioner has failed to establish good moral character.

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 13th day of December, in the year of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

ORDER DENYING PETITION
FOR NATURALIZATION

The petition of Foon Goon Mok for naturalization came on regularly this day to be heard. The

petitioner was present with his attorney, Mr. Zwerin. Francis P. Boland, Esq., Naturalization Examiner, was present on behalf of the United States and presented the adverse recommendation of the Designated Officer of the Bureau of Immigration and Naturalization. The petitioner was duly sworn and examined. Mr. Boland introduced in evidence and filed U. S. Exhibit No. 1 (copy of passport application). Ordered that the United States may withdraw U. S. Exhibit No. 1. Mr. Zwerin introduced in evidence and filed Petitioner's Exhibit "A" (photostat of Honorable Discharge and Army Record). After hearing the petitioner and counsel, thereupon, on motion of Mr. Boland, and due consideration having been thereon had,

Ordered that said petition for naturalization be, and the same is hereby, Denied upon the ground that the petitioner has failed to establish his good moral character for the required period of time. The foregoing is in accordance with a signed order this day filed.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the petitioner, Foon Goon Mok, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment heretofore and on the 13th day of December, 1949, rendered and filed against said

Foon Goon Mok denying his petition for naturalization.

Dated: This 11th day of January, 1950.

/s/ K. C. ZWERIN,

Attorney for Petitioner.

[Endorsed]: Filed January 11, 1950.

[Title of District Court and Cause.]

DESIGNATION OF RECORD

The petitioner does hereby designate the following records which he desires certified to the United States Court of Appeal for the Ninth District:

1. Original or certified copy of Petition for Naturalization.

2. Original or certified copy of naturalization petitions recommended to be denied.

3. Report and recommendation of designated examiner.

4. Reporter's transcript of proceedings.

5. Honorable Discharge from United States Army dated September 26, 1945, of petitioner.

6. Original or certified copy of findings of Board of Special Inquiry dated August 27, 1948, before Immigration and Naturalization Service.

7. Original or certified copy of order of Immigration and Naturalization Service dated October 20, 1948, staying execution of excluding order.

8. Order denying petition for naturalization.

9. Notice of Appeal.

10. Original or certified copy of Order of Immigration and Naturalization Service dated October 13, 1948, excluding appellant.

Respectfully submitted,

/s/ KENNETH C. ZWERIN,

Attorney for Petitioner.

[Endorsed]: Filed February 7, 1950.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellant herein may have to and including April 1, 1950, to file the Record on Appeal in the United States Court of Appeals in and for the Ninth Circuit.

Dated: February 17, 1950.

/s/ LOUIS GOODMAN,

United States District Judge.

[Endorsed]: Filed February 17, 1950.

United States Department of Justice
Immigration and Naturalization Service

No. 90811

Oct. 20, 1948

RECOMMENDATION THAT EXECUTION OF
THE EXCLUDING ORDER BE STAYED

In the Matter of the Petition of Foon Goon Mok
for Naturalization.

File: A-6953565-San Francisco (1300-80612)

(No Appeal.)

In re: Mok Fong Goon or Mok Yick Jue or Henry
Mok in Exclusion Proceedings.

In Behalf of Appellant:

CHOW and SING,

Attorneys,

550 Montgomery Street,

San Francisco 11, California,

and

LAMBERT O'DONNELL,

Attorney,

957 Warner Building,

Washington 4, D. C.

Excluded: Act of 1924—No immigration visa
Executive Order 8766—No passport.

Application: That execution of the excluding
order be stayed.

Detention Status: Released under \$3,000 bond.

Discussion: This record relates to a 38-year-old
male, native and citizen of China, who was ex-
cluded from admission to the United States by a

Board of Special Inquiry at San Francisco, California, on August 27, 1948. On October 13, 1948, the Assistant Commissioner considered this case on appeal, ordered that the excluding decision of the Board of Special Inquiry be affirmed; and further ordered that the application for stay of execution of the excluding order be denied.

The subject alien is a veteran of World War II having been honorably discharged from the Army of the United States on September 26, 1945, after service therein from October 7, 1942. In our order of October 13, 1948, we denied counsel's request that execution of the excluding order be deferred to permit the alien to apply for naturalization under Public Law 567. However, counsel now states that the alien filed a petition for naturalization at the San Francisco, California Office of this Service on October 5, 1948. In the circumstances, execution of the outstanding excluding order will be deferred pending the outcome of the alien's petition for naturalization provided said petition was filed as claimed.

Recommendation: It is recommended that execution of the outstanding excluding order be stayed pending final determination of the alien's petition for naturalization provided said petition was filed on October 5, 1948, as claimed.

Chief Examiner.

So Ordered:

Assistant Commissioner.

EJD:acb

[Endorsed]: Filed March 31, 1950.

In the Southern Division of the United States
District Court for the Northern District of
California

In the Matter of the Contested Petition for Nat-
uralization of Foon Goon Mok

Before: Hon. Louis E. Goodman,
Judge.

PROCEEDINGS ON HEARING ON CON-
TESTED PETITION FOR NATURALIZA-
TION

Tuesday, December 13, 1949

Appearances:

For the Petitioner:

KENNETH CARLTON ZWERIN, ESQ.

For the United States:

FRANCIS P. BOLAND, ESQ.

Mr. Boland: Your Honor, there is one more
attorney whose case we have to dispose of, and that
is No. 29, for Foon Goon Mok.

The Clerk: What number?

Mr. Boland: 29. No. 9081.

FOON GOON MOK

called in his own behalf; sworn.

The Clerk: Will you state your name to the
Court?

A. Mok Foon Goon.

(Testimony of Foon Goon Mok.)

Direct Examination

By Mr. Boland:

Q. Do you think you understand enough English to understand what is going on today?

A. I try, sir.

Q. What? A. I try.

Q. Well, do you think you should have an interpreter here so you will understand completely what is going on? A. Yes.

Q. What?

The Court: How long was he in the army?

Mr. Zwerin: Three years, Your Honor, overseas most of that entire time.

The Court: Well, with a captain in the army, and he must have been able to talk well enough.

Mr. Boland: Well, when I was taking a statement from him now, he didn't appear to understand me. Whether it was deliberate or not, I don't know. But I felt—

The Court: Most of the Chinese people that were in the army who were unable to comprehend were discharged within a few months. You know, we had a lot of those cases where Judge St. Sure rendered his decisions denying the going behind the certificate of service in the army. Most of them were discharged. I shouldn't think he would be in the army three years if he couldn't understand.

Mr. Zwerin: He was with an officer most of that time, too.

Mr. Boland: The reason I asked the question

(Testimony of Foon Goon Mok.)

was that when I took a statement from him, he did not understand me; so I had to use one of our interpreters. I wanted him to be sure to understand what was going on now.

The essential facts here are not in dispute; the petitioner was born in China and came to the United States about 1930, he came illegally at that time. In 1942—I will give you the exact date—October 7, 1942, he entered the armed forces of the United States and at that time claimed birth in the United States. He was honorably discharged from the army on September 26, 1945. His certificate of military service shows that he served outside the continental limits of the United States from March 5, 1943, to September 17, 1945.

Mr. Zwerin: Two years and six months.

Mr. Boland: On July 12, 1946, he applied for a United States passport. Here is a certified copy, which I offer in evidence, of his application for a passport.

The Clerk: U. S. Exhibit No. 1.

(Thereupon certified copy of application for passport was received in evidence and marked United States Exhibit No. 1.)

Mr. Boland: I would like permission to withdraw it at the end of the hearing.

The Court: Very well.

Mr. Boland: During 1946 he also appeared as a witness in a naturalization proceeding, wherein he claimed he was a citizen, and a man was natural-

(Testimony of Foon Goon Mok.)

ized with him as a witness. In that same year he also executed an affidavit wherein he claimed citizenship for that same man.

In August of 1948 he came to San Francisco from China on the passport which he had procured, and at first claimed that he was born in San Francisco. A few days later he admitted that he was not born in San Francisco. Both times those statements were made under oath. He also, before an officer of this service, and to the army, claimed that he was not married, claimed he was not married when he entered the army. He claimed he was married in 1947 when he applied to enter the United States. His first statement, in August of '48, that was. In the second statement he claimed he had been married twice, both times to the same woman. He married a Chinese woman the second time in the American consul's office.

Mr. Zwerin: In China?

Mr. Boland: In China, yes.

That is about the extent of the false representations and about the extent of our case. If there are any further questions which counsel would care to have me bring out?

Mr. Zwerin: No, Mr. Boland, I have a copy here of the summary report, which you undoubtedly have, since it came from your office, which shows that he was detained in Honolulu on his way back from China and then brought here on the 11th of August, at which time the primary hearing

(Testimony of Foon Goon Mok.)

was discontinued and further investigation instituted. And then on August 16th, five days later, 1948, he was questioned and at that time freely admitted that he was in fact born in China, giving his correct name and true birth date. No indictment was returned in this case, Your Honor, no criminal prosecution was instituted.

I may say, Your Honor, that this is an application, of course, under the military provision of the law. The discharge, a photostatic copy of which I have here, shows that he served in the European-African-Middle Eastern theater and was awarded a ribbon with one silver and two bronze battle stars and five overseas service bars. He was in the army a few days less than three years and was in the continental United States only four months and 25 days of that entire time. The rest of the time he served overseas. He was discharged for the convenience of the government; it is an honorable discharge.

I ask leave to file it as petitioner's exhibit first in order.

(Thereupon discharge from army was received in evidence and marked Petitioner's Exhibit A.)

Mr. Zwerin: Yes. Now, if Your Honor pleases, with regard to the defendant's present situation, the Immigration people ordered that he be excluded. I don't have the date of that exclusion order. 8/27/48 was the original hearing. And an appeal

(Testimony of Foon Goon Mok.)

was then taken to Washington through the Immigration Service, which affirmed the order of exclusion, but then, in view of the fact that this petition for naturalization had been filed and that their order be stayed pending the final determination of the alien's petition for naturalization. So the status of this alien, if Your Honor pleases, is a little different than, perhaps, some of the others before you; and that is, if his application be denied, he will immediately be deported.

As I say, he comes here under the military. Your Honor is undoubtedly familiar with the fact that the law was changed, permitting people that served in the armed forces to make application. The particular provision for seven years was deleted, and there has been a question among lawyers, and I think even in the Immigration Service, as to what has been meant by the action of Congress in deleting the time element. Your Honor, I know, in the past, has denied some of these applications. I [6] understand that in a similar matter pending before Judge Erskine, the application was granted for citizenship, and the government then took an appeal, and that appeal is still pending, and hasn't been determined by the Circuit Court. I believe Judge Erskine's case was similar to this, Mr. Boland. It was a military man?

Mr. Boland: Yes.

Mr. Zwerin: No indictment was returned. It was a false claim to citizenship. The applicant was awaiting deportation.

(Testimony of Foon Goon Mok.)

Mr. Boland: Well, I have forgotten what the false statements were about, but it did involve false statements.

Mr. Zwerin: It is comparable to this case.

Mr. Boland: And he is deportable, or he was before Judge Erskine admitted him.

The Court: Of course, we had a number of these cases of false claims to citizenship that were prosecuted.

Mr. Zwerin: Yes, Your Honor. I handled some of them.

The Court: I think you were representing some of them, acting as attorney in several cases.

Mr. Zwerin: Of course, here is a man who served this country, and apparently served it well, in the army—who, if he had been properly advised, could have made application under the law and would probably have been granted his citizenship. Instead of which, apparently, he was misadvised and now finds himself, after being in this country for some 23 or 24 years, [7] subject to being deported. How long has he been here, Mr. Boland?

Mr. Boland: We have never been able to verify his entry, but I believe that he consistently claimed entry in 1930.

Mr. Zwerin: 1930. This is 1949; almost 1950.

Mr. Boland: Now this is slightly different from the normal case of a person who has been guilty of misconduct before his military service or during the military service. Here the misconduct took place after his discharge; presumably he should

(Testimony of Foon Goon Mok.)

have known that he could be naturalized as an alien. Then he not only makes the false claim of citizenship for his own interests, but he goes out and makes a false claim of citizenship as a witness in a naturalization proceeding, indicating a complete disregard of the possibility of voiding that man's citizenship. Not once, but twice. When this man applies for citizenship in Chicago, he acted as a witness for him there, and then when this same man is applying for a United States passport, he again claims citizenship and executes an affidavit for him. So here, all of his misconduct occurred after his military service, and has been continuing up to August of '48, when he made a complete breast of everything.

Mr. Zwerin: And since he filed his petition, which was on October 5th of 1948, over a year ago, you have nothing to report since that time, Mr. Boland, as to misconduct?

Mr. Boland: Well, I don't know when our latest criminal record is, but I don't know of any.

The Court: August, 1948?

Mr. Boland: I don't think there is any.

Mr. Zwerin: Yes, Your Honor, the application was filed for citizenship in October of 1948 and then the stay order was issued on October 20, 1948, from Washington.

Mr. Boland: I think the petition was filed later than that.

Mr. Zwerin: The petition, yes.

Mr. Boland: The petition for naturalization.

(Testimony of Foon Goon Mok.)

The Court: Well, the trouble is, counsel, that as you know the extent of this racket of claiming American citizenship is so great that it resulted in innumerable prosecutions here, and of course many of the Chinese people are imposed upon by these racketeers who sold them fake birth certificates.

Mr. Zwerin: There is no birth certificate involved in this matter, Your Honor.

The Court: No, but it became a scandalous situation, the whole thing.

Mr. Zwerin: I am familiar with the whole situation.

The Court: Yes.

Mr. Zwerin: And the matter where even non-Chinese were involved.

The Court: But it is pretty hard to——

Mr. Zwerin: Pretty hard to send this man back.

The Court: The only basis upon which I can rest a decision admitting the applicant to citizenship would be sympathy for him.

Mr. Zwerin: It is pretty hard to send him back to China at this time.

The Court: Well, of course, that might be the effect, that he might be deported; but that also might be the effect of denying an application for citizenship in other cases, too. It is a question of whether his entry was lawful—his entry into the United States. And I think it might be considered a harsh rule by the department to deport a man who served honorably in the armed forces.

(Testimony of Foon Goon Mok.)

Mr. Zwerin: There is no criminal record involved with this man. There is none at all.

The Court: There is an offense committed, however.

Mr. Zwerin: I understand, but I mean, what I had in mind, Your Honor, was that during his residence in the United States prior to going into the army, there is no police record as such.

The Court: I think that the decision of the Immigration people is somewhat harsh, if his application for citizenship is not approved, in deporting him, in view of his honorable service in the armed forces. But where an offense such as this has been committed and admittedly so, I don't see upon what basis, except sympathy, that I could make an order admitting him to citizenship. He swore falsely that he was an American citizen on more than one occasion; once in his own interests and also to get somebody else admitted to citizenship.

Mr. Zwerin: And he swore falsely to be an American citizen when he enlisted in the United States Army, Your Honor.

The Court: Enlisted or drafted?

Mr. Zwerin: I believe he was drafted, but at any rate, when he registered for the draft.

The Court: He would have been eligible for the draft anyhow.

Mr. Zwerin: It says "inducted into the military service," but I wouldn't rely on that, because they might conclude that anyone reported by the draft board was inducted.

(Testimony of Foon Goon Mok.)

The Court: Well, Congress has fixed a rather severe penalty for false claims of American citizenship. It is considered a serious offense. It was committed. It may not have been prosecuted for reasons which were sufficient to the prosecuting authorities—probably because of his record in the army. But the naturalization statute provides for a good character, and here within a very brief period before he applied for citizenship, he made this false affidavit, and the one in 1946, only two years before he applied for citizenship, he swore falsely in behalf of some other applicant for citizenship. So I don't see how I can with good conscience——

Mr. Zwerin: Well, could Your Honor take this matter under submission pending the opinion by the Circuit Court? It may clarify the situation, since Judge Erskine's ruling is there being passed upon.

The Court: Well, I don't know what the facts are in the case Judge Erskine ruled upon.

Mr. Zwerin: They are comparable—a comparable situation.

The Court: Well, that is a word—"comparable" that——

Mr. Zwerin: That attorneys use.

The Court: "Comparable" is a word that covers a lot of ground.

Mr. Boland: Well, in that case I recommended against an appeal, because I felt the issue was an issue of fact, and I still think that when it gets upstairs the Court will decide that this case in ap-

(Testimony of Foon Goon Mok.)

peal from Judge Erskine is a question of fact for the trial court. I don't see where any precedent in that case——

The Court: Do you happen to remember what the facts were?

Mr. Boland: There are false statements as to—I don't know whether it was as to his marriage or what it was. But anyway, there were false statements up to approximately a month or two months prior to the filing of the petition.

The Court: Well, was that false claim of citizenship?

Mr. Boland: I don't recall. I have so many of these that I forget them.

Mr. Zwerin: It was military background.

Mr. Boland: Yes, he did have such.

Mr. Zwerin: But the false statements, if Your Honor pleases, were up to approximately two months prior to the filing of the application.

The Court: But did the man in Judge Erskine's case swear falsely that he was an American citizen to get somebody else naturalized, and also in his own behalf?

Mr. Boland: No, it was only to protect himself that he swore falsely, and I think the false statements were in regard to his marital status. He had been guilty of bigamy, too.

The Court: He was what?

Mr. Zwerin: He was a bigamist as well, Your Honor. He was guilty of bigamy, wasn't he, in Judge Erskine's case?

(Testimony of Foon Goon Mok.)

Mr. Boland: Yes.

Mr. Zwerin: This man has had a laudable record in the army, Your Honor. Battle stars and campaigns.

The Court: What did you do in the army?

The Witness: I worked for the officers.

The Court: What kind of work did you do?

A. For the quartermaster.

Q. What kind of work did you do yourself?

A. Now?

Q. No, in the army.

A. I mean, I work for the officers.

Q. Yes, I know, you worked for the officers, but what did you do, what kind of work did you do?

A. Mak-a bed, iron the clothes, you know.

Mr. Zwerin: The record discloses the word "orderly," Your Honor.

The Court: You were an orderly?

A. Yes.

Q. Who were you orderly for?

A. Well, the captain, they call me, you know—wash clothes, mak-a bed.

Q. I see. And where were you, in Germany?

A. Yes, Germany, Africa.

Q. And in Africa? A. Italy.

Q. Your captain was in the Quartermaster Department? A. That's right.

Mr. Zwerin: He was overseas for two years and six months.

The Court: But I don't know how I can disregard this record of——

(Testimony of Foon Goon Mok.)

Mr. Zwerin: He is like so many of these Chinese, Your Honor. They just love this country too much.

The Court: Well, there may be something in that, but there is a lot of other people who would like to get here, too.

Mr. Zwerin: Well, you see, if he hasn't made his application for the passport, or if he hadn't, he probably would have remained in Chicago where he was in the laundry business, and would have been swallowed up in that Chinatown.

Mr. Boland: Well, he did remain in Chicago, and he made a false claim even there.

Mr. Zwerin: Yes, but I mean—oh, you mean he was just helping a countryman out.

The Court: Well, I am sorry, but I feel that it is advisable to deny this application.

Mr. Zwerin: Yes, Your Honor.

The Court: That is all.

Certificate of Reporter

I, Official Reporter and Official Reporter pro tem, certify that the foregoing transcript of 15 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

/s/ ELDON N. RICH.

[Endorsed]: Filed March 30, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibit, listed below, are the originals filed in this court, or a true and correct copy of an order entered on the minutes of this Court, in the above-entitled case, and that they constitute the Record on Appeal herein, as designated by the Appellant, to-wit:

Copy of Petition for Naturalization.

Copy of Naturalization Petitions Recommended To Be Denied.

Copy of Recommendation Page 29, Attached To And Made A Part Of Findings And Recommendations Of Designated Examiner, etc.

Minute Order of December 13, 1949—Order Denying Petition For Naturalization.

Notice of Appeal.

Designation of Record.

Order Extending Time To Docket to April 1, 1950.

Copy of Order of Immigration and Naturalization Service dated October 20, 1948, Staying Execution Of Excluding Order.

Petitioner's Exhibit No. A—Copy of Honorable Discharge.

Reporter's Transcript for December 13, 1949.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 31st day of March, A. D. 1950.

C. W. CALBREATH,
Clerk.

[Seal]: By /s/ M. E. VAN BUREN,
Deputy Clerk.

[Endorsed]: No. 12516. United States Court of Appeals for the Ninth Circuit. Foon Goon Mok, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California Southern Division.

Filed March 31, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit
No. 12516

FOON GOON MOK,

Appellant.

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY IN THE APPEAL OF THE ABOVE ENTITLED MATTER

Comes now Foon Goon Mok, by and through his attorney, Kenneth Carlton Zwerin, and files herein the statement of points on which appellant intends to rely in the appeal of the above entitled matter.

I.

The District Court erred in finding that said appellant had not established good moral character as required by Section 324 (a) of the Nationality Act of 1940 (8 U.S.C.A. 724 (A)).

II.

The District Court erred in denying appellant's petition for naturalization as a citizen of the United States.

/s/ KENNETH C. ZWERIN,
Attorney for Appellant.

Receipt of Copy acknowledged.

[Endorsed]: Filed April 6, 1950.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD TO BE INCORPORATED IN TRANSCRIPT OF RECORD ON APPEAL

Appellant, Foon Goon Mok, by and through his attorney, Kenneth Carlton Zwerin, in the above entitled matter, hereby designates the entire record in the above entitled matter to be included in the transcript of record on appeal on his pending appeal from the judgment heretofore made, filed and entered in said matter denying appellant's petition for citizenship.

/s/ KENNETH C. ZWERIN,
Attorney for Appellant.

Receipt of Copy acknowledged.

[Endorsed]: Filed April 6, 1950.